

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Criminal Case No. 07-MJ-2374-RBB

Plaintiff,

V.

JOSE FRANCISCO GARCIA,

FINDINGS OF FACT AND ORDER OF DETENTION

Defendant.

In accordance with § 3142(f) of the Bail Reform Act of 1984 (18 U.S.C. § 3141 *et seq.*), this Court conducted a detention hearing on October 10, 2007, to determine whether Jose Francisco Garcia (“the Defendant”) should be held in custody pending trial, on the grounds that he is a risk of flight. Assistant United States Attorney Caroline Han appeared on behalf of the United States. Holly Hanover appeared on behalf of the Defendant.

Based on the evidence proffered by the United States, the Defendant, the Pretrial Services Report, and the Complaint, the Court concludes that the following facts establish by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required. As such, the Court orders that the Defendant be detained pending trial.

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I.

FINDINGS OF FACT

A. Nature and Circumstances of the Offense Charged (18 U.S.C. § 3142(g)(1))

1. The Defendant is charged in Criminal Complaint No. 07-MJ-2374 with importing approximately 12.05 kilograms of methamphetamine a Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 952, 960.

2. If convicted of this charge, the Defendant faces a mandatory minimum sentence of ten years, and a maximum sentence of life in prison pursuant to 21 U.S.C. § 960(b)(1).

3. Because a maximum term of imprisonment of ten years or more is prescribed for this offense in 21 U.S.C. § 960(b)(1), the presumption set forth in 18 U.S.C. § 3142(e) that no condition or combination of conditions will reasonably assure the appearance of the Defendant as required is applicable.

4. The evidence presented in accordance with this factor weighs in favor of detention.

B. Weight of the Evidence Against the Defendant (18 U.S.C. § 3142(g)(2))

1. On October 2, 2007, the Defendant attempted to enter the United States at the Tecate Port of Entry as the driver and sole occupant of a vehicle from which eight packages containing approximately 12.05 kilograms of methamphetamine were recovered from a non-factory compartment in the rear bumper.

2. Although it is the least important factor, the evidence against the Defendant sustains a finding of probable cause to conclude that the Defendant committed the instant offense.

3. The evidence presented in accordance with this factor weighs in favor of detention.

C. History and Characteristics of the Defendant (18 U.S.C. § 3142(g)(3))

1. The evidence presented regarding the Defendant's character weighs neither in favor of detention nor bail.

2. The evidence presented regarding the Defendant's physical and mental condition weighs neither in favor of detention nor bail.

1 3. The Defendant has resided in California in the San Bernardino area for his entire
2 life. He currently resides in San Bernardino where his parents and two children reside. The
3 evidence presented regarding the Defendant's family ties weighs in favor of bail.

4 4. The Defendant has been employed for the last two years with a roofing company.
5 The evidence presented with regard to the Defendant's employment weighs in favor of bail.

6 5. The Defendant has no known significant financial resources in the United States,
7 and this evidence weighs in favor of detention.

8 6. The Defendant has resided in California his entire life. The evidence presented
9 regarding the Defendant's length of residence in the community weighs in favor of bail.

10 7. The evidence presented with regard to the Defendant's community ties is
11 repetitive of evidence presented with regard to other factors, and thus weighs neither in favor of
12 detention nor bail.

13 8. The Defendant has no history of alcohol or drug abuse, and this evidence weighs
14 in favor of bail.

15 9. The Defendant has a serious criminal history, and this evidence weighs in favor of
16 detention.

17 10. The Defendant has a record of appearing at court proceedings. This factor weighs
18 in favor of bail.

19 11. The Defendant is currently on probation and was on probation at the time of the
20 charged offense. This factor weighs in favor of detention.

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22 II.

23 REASONS FOR DETENTION

24 A. There is probable cause to believe that the Defendant committed the offense
25 charged in Criminal Complaint No. 07-MJ-2374-RBB; namely, Importation of Methamphetamine
26 a Schedule II Controlled Substance, in violation of 21 U.S.C. §§ 952, 960.

27 B. The Court finds that the Defendant was unable to rebut the presumption, as set
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1 forth in 18 U.S.C. § 3142(e), that there is no condition or combination of conditions that the Court
2 could set that will reasonably assure the appearance of the Defendant as required.

3 C. The Court finds, by a preponderance of evidence, that the United States has carried
4 its burden of establishing that no condition or combination of conditions will reasonably assure
5 the appearance of the Defendant as required.

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III.

ORDER

IT IS HEREBY ORDERED that the Defendant be detained pending trial in this matter.

IT IS FURTHER ORDERED that the Defendant be committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded reasonable opportunity for private consultation with counsel.

While in custody, upon order of a court of the United States or upon the request of an attorney for the United States, the person in charge of the correctional facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding or any other appearance stipulated to by defense and government counsel.

THIS ORDER IS ENTERED WITHOUT PREJUDICE.

IT IS SO ORDERED.

DATED: October 12, 2007

Ruben Brooks
HONORABLE RUBEN B. BROOKS
United States Magistrate Judge

Prepared by:

/s/ Caroline Han

CAROLINE P. HAN
Assistant United States Attorney

cc: Holly Hanover, Counsel for Defendant